

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN FERNANDEZ,<sup>1</sup>

Case No. 3:14-cv-00578-MMD-VPC

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**Plaintiff,**

AMENDED ORDER  
ACCEPTING AND ADOPTING AMENDED  
REPORT AND RECOMMENDATION OF  
MAGISTRATE JUDGE  
VALERIE P. COOKE

JAMES GREG COX, *et al.*,

## Defendants.

Before the Court is the Amended Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (ECF No. 387) ("R&R") relating to defendants' motion for summary judgment ("Motion") (ECF No. 342, 344 (sealed)). The Magistrate Judge recommends granting the Motion in part and denying it in part. Plaintiff had until January 22, 2018, to object to the R&R. To date, no objection has been filed.<sup>2</sup>

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue

<sup>1</sup>The previous Order (ECF No. 388) incorrectly reflected Plaintiff's name as Kevin Hernandez. This order corrects that error.

<sup>2</sup>Plaintiff had objected to the original Report and Recommendation, asking the Magistrate Judge to correct an apparent clerical error. (ECF No. 385.) The R&R was amended to correct the clerical error. (ECF No. 387 at 1 n. 1.)

1 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).  
2 Indeed, the Ninth Circuit has recognized that a district court is not required to review a  
3 magistrate judge's report and recommendation where no objections have been filed. See  
4 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard  
5 of review employed by the district court when reviewing a report and recommendation to  
6 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,  
7 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the  
8 view that district courts are not required to review "any issue that is not the subject of an  
9 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then  
10 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.  
11 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
12 which no objection was filed).

13 Nevertheless, this Court finds it appropriate to engage in a *de novo* review to  
14 determine whether to adopt Magistrate Judge Cooke's R&R. The Magistrate Judge  
15 recommends granting Defendants' Motion as to Plaintiff's state law claims against  
16 Defendants in their official capacity and denying as to Plaintiff's remaining claims. Upon  
17 reviewing the R&R and underlying briefs, this Court finds good cause to adopt the  
18 Magistrate Judge's R&R in full.

19 It is therefore ordered, adjudged and decreed that the Report and  
20 Recommendation of Magistrate Judge Valerie P. Cooke (ECF No. 387) is accepted and  
21 adopted in its entirety.

22 It is ordered Defendants' motion for summary judgment (ECF No. 342) is granted  
23 as to Plaintiff's state law claims against Defendants in their official capacity, including  
24 any claims where Plaintiff seeks to hold the State of Nevada or the Nevada Department  
25 of Corrections liable for Defendants' alleged conduct.

26 It is further ordered that Defendants' motion for summary judgment (ECF No. 342)  
27 is denied as to Plaintiff's remaining claims.

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1 It is further ordered that Defendants' motion to seal certain exhibits containing  
2 Plaintiff's medical records (ECF No. 370) is granted.

3 DATED THIS 21<sup>st</sup> day of February 2018.

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6 MIRANDA M. DU  
7 UNITED STATES DISTRICT JUDGE  
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